

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES TURNER,

No. C-14-3428 TEH (PR)

Petitioner,

v.

ORDER TO SHOW CAUSE; GRANTING  
LEAVE TO PROCEED IN FORMA  
PAUPERIS

JOHN KATAVICH, Warden,

Respondent.

(Doc. #4)

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Petitioner, Charles Turner, a state prisoner incarcerated  
at Wasco State Prison, has filed a pro se Petition for a Writ of  
Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of  
conviction from the Contra Costa County Superior Court. Doc. #1.  
Petitioner also seeks leave to proceed in forma pauperis. Doc. #4.

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## I

According to the Petition, in June 2011, Petitioner was convicted of second degree murder and attempted voluntary manslaughter. He was sentenced to forty-seven years to life in state prison. The California Court of Appeal affirmed, and the California Supreme Court denied review. Petitioner did not seek habeas relief in state court. The instant action was filed on July 29, 2014.

## II

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

Petitioner asserts the following claims: (1) the trial court erred in admitting statements to police made by the victim of the count for attempted voluntary manslaughter; and (2) the trial court erred in instructing the jury on consideration of other offenses to establish petitioner's identity.

Liberal construed, Petitioner's claims appear cognizable under 28 U.S.C. § 2254 and merit an Answer from Respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

III

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (Doc. #4) is GRANTED.

2. The Clerk shall serve by certified mail a copy of this Order and the Petition, and all attachments thereto (i.e., Doc. #1), on Respondent Katavich and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this Order on Petitioner.

3. Respondent shall file with the Court and serve on Petitioner, within sixty-three (63) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the Answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the Petition.

If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with the Court and serving it on Respondent within thirty-five (35) days of his receipt of the Answer.

4. In lieu of an Answer, Respondent may file a Motion to Dismiss on procedural grounds, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an Opposition or Statement of Non-Opposition within thirty-five (35) days of receipt of the motion, and Respondent shall file with the Court and serve on

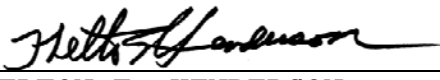
1 Petitioner a Reply within fourteen (14) days of receipt of any  
2 Opposition.

3 5. Petitioner is reminded that all communications with  
4 the Court must be served on Respondent by mailing a true copy of the  
5 document to Respondent's counsel. Petitioner also must keep the  
6 Court and all parties informed of any change of address by filing a  
7 separate document entitled "Notice of Change of Address."

8 6. This Order terminates docket number 4.

9 IT IS SO ORDERED.

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11 DATED 11/25/2014

  
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THELTON E. HENDERSON  
United States District Judge

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